SATELLITE BUSINESS NEWS®

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THE SATELLITE TV INDUSTRY'S LEADING NEWS PUBLICATION

Vol. 25 No. 9 | September 30, 2013 | $2.95

Hearings Set Table for Video Law Debate

Dish Network's Stanton Dodge testifies at a hearing on Capitol Hill.

WASHINGTON—While they did not shed much light, if any, on whether Congress will let the distant network station and superstation provisions of current satellite TV law expire as scheduled at the end of next year, the latest pair of hearings dealing with those laws and other video-related rules illuminated the fact there will continue to be much debate about the issues for months to come.

While lawmakers shied away from taking firm stances on what should happen, witnesses at a House Courts and Intellectual Property Subcommittee hearing largely stuck to familiar scripts regarding whether Congress should extend the portions of satellite TV law dealing with distant network station and superstation provisions, and what, if any, changes should be made to other video-related laws.

That hearing preceded one the following day held by the House Communications and Technology Subcommittee.

The sharpest exchanges during the first hearing came between Dish Network General Counsel Stanton Dodge and Gerard Waldron, who spoke for The National Association of Broadcasters (NAB) at the session.

Among other things, Dodge said broadcasters are "crying wolf" about the effect making any changes to retransmission consent rules would have on their business.

Along with advocating the continuation of the distant network station and su-

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Legal Maneuvers Swirl Around Lightsquared

At press time, amid a flood of legal filings by various parties, the embattled Lightsquared was awaiting word from a federal judge on who would get to be in the driver's seat for the sale or auction of the bankrupt company, which holds 46 MHz of L-band spectrum.

As it continues to hold out hope for a ruling from the Federal Communications Commission that would allow Lightsquared to use its frequencies for mainly wireless services, Lightsquared asked the federal bankruptcy court in New York to allow the company to decide whether to sell its assets rather than have them put up for auction.

The FCC last year barred Lightsquared from employing its frequencies for mostly terrestrial use.

At the same time, Lightsquared's principal owner, Phil Falcone's Harbinger Partners, proposed a reorganization plan that calls for Harbinger to raise more than $3 billion to pay off Lightsquared debt and other obligations, while maintaining control of the company.

Meanwhile, a group of Lightsquared debt holders wants the court to conduct an auction of the assets in December, with an

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Judges Squash Network Injunction Requests Against Dish Network

By Jeffrey Williams

Though the bi-coastal legal fight between Dish Network and broadcasters is far from over, federal judges in Los Angeles and New York handed the DBS service the latest two rounds by rejecting requests Fox Broadcasting and ABC had made seeking injunctions that would have forced Dish Network to shut down some of the key functions of its latest multi-room digital video recorder.

In the latest decision, a judge in Los Angeles rejected Fox's motion for a temporary injunction that would have forced Dish Network to disable the Slingbox and recorded programming transfer applications on the unit.

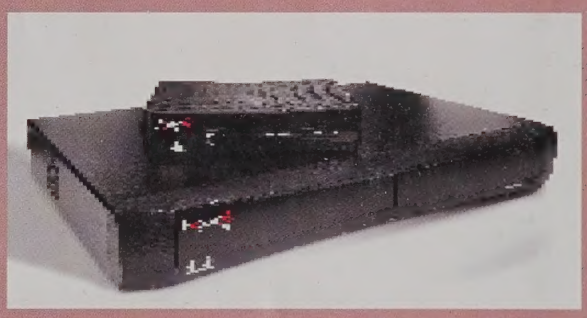

Photo courtesy Dish Network

A pair of courts turned down broadcaster requests for injunctions that would have forced Dish Network to disable some functions of its multi-room digital video recorder.

EchoStar, a Dish Network sister company, owns the Slingbox.

Meanwhile, a federal court in New York rejected ABC's motion for an injunction against the Dish Network recorder's ad-skipping and prime-time recording features.

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DirecTv Expects to Keep Sunday Ticket

Other companies such as Google and various cable companies might enter the negotiating mix, but DirecTv expects it will be able to keep its exclusive rights to The NFL Sunday Ticket package, DirecTv Chairman Mike White and DirecTv Chief Executive Officer Pat Doyle said during recent financial conferences.

Though the NFL still has to decide if it wants to continue the exclusive arrangement, White said he is "still optimistic" DirecTv will hold onto its exclusive rights to the football package.

"It's been a very successful partnership," White said. "We're very pleased with how it's worked…We'd like to continue the partnership and I'm still optimistic" DirecTv will retain the package.

So far this year, White noted, DirecTv has garnered "really good traction" with its marketing campaign that highlights the availability of NFL Sunday Ticket games on subscribers' phones.

DirecTv received widespread

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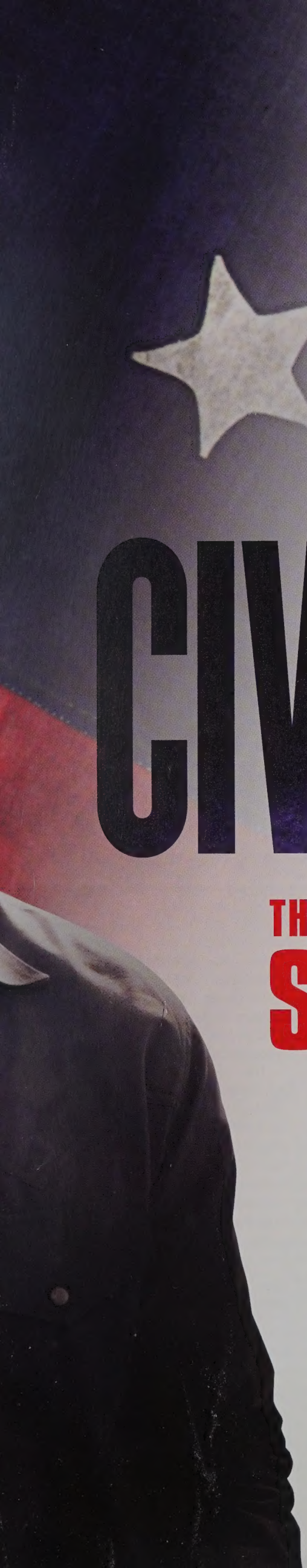

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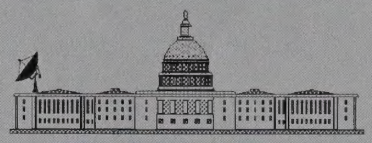

Washington Footprint

★Though there are still several steps to go, the Federal Communications Commission moved a closer to having a full complement of commissioners following a hearing on the nomination Mike O'Reilly to fill the open Republican seat at agency.

As reported, the Senate Commerce Committee approved Tom Wheeler's (D) nomination to be the next chairman of the FCC in July.

But a vote on the Senate floor regarding Wheeler's nomination has been pending until a Republican nominee can also be moved to the Senate floor for a vote at the same time.

O'Reilly would fill the seat vacated with the departure of Robert McDowell (R) in March.

During a recent hearing on O'Reilly's nomination, Senate Commerce Committee Chairman Jay Rockefeller (D-W. Va.) said he intends to schedule a vote on O'Reilly's nomination "soon" and then plans to "push for quick consideration on the Senate floor" for the nominations.

The committee hearing also addressed the nomination of Terrell McSweeny (D) to be a commissioner at the Federal Trade Commissioner.

"I can tell you that these agencies do their strongest work for the American people when all commissioners are on board," Rockefeller said.

During the hearing, O'Reilly, a 20-year Capital Hill staff member in various offices, said he favors efforts to "reduce excessive regulations" on the Internet and telecommunications services.

At several points during the hearing, he contended the rapidly evolving market for Internet services means the FCC should avoid imposing regulations on it that industry segment.

"Industry regulators would be smart to embrace [change] rather than control or manage it," O'Reilly said.

There was little discussion of video-related issues during the hearing, though O'Reilly suggested he was willing to consider changes to media ownership rules.

After Sen. Mark Pryor (D-Ark.) expressed concern the long-time Republican staff member might be too partisan, O'Reilly said he was "absolutely" willing to work with Democrats at the FCC.

Mignon Clyburn (D) has been the acting chairwoman of the agency since April, when former Chairman Julius Genachowski (D) left the commission.

★Programmers and broadcasters are to blame for creating a video service marketplace that continues to see rising prices and less choice for consumers, American Cable Association (ACA) President Matt Polka argued during a recent interview on C-SPAN.

"We believe the video marketplace is broken, as you look at any number of disputes that are occurring today" over retransmission consent and distribution fees, he said.

In particular, and as the group and numerous others have over the years, Polka contended programmers are unfairly requiring video services to distribute channels in large programming packages rather than letting video services create smaller, less expensive packages that contain channels the customers want.

"It's a huge issue, one that's not resolved," he said. "It's only getting worse."

If consumers end up abandoning traditional cable and satellite TV services for various Internet-delivered options, programmers will bear the responsibility for the move, he said.

"There will only be one party to blame, and that is the content providers," Polka said. "Because they're the ones creating the massive [channel] bundle that we have to [accept] today and that consumers are really starting to revolt against, not only because of price increases but because of [lack of] choice."

Polka also singled out sports programming as being a huge driver of costs to all customers, even though many would prefer not to have sports channels included in the programming packages they buy.

"Sports is outrageously expensive," he said, with Fox, Comcast's NBC, and ESPN all seeking higher wholesale fees for their sports programming.

★The FCC said it plans to conduct an auction of a portion of the so-called "H block" spectrum for wireless use Jan. 14.

The auction is for 176 licenses based on geographic "economic areas" to each use a total of 10 MHz of spectrum in those areas, the FCC said.

Though Clyburn and Commissioner Ajit Pai (R) praised the plan, Commissioner Jessica Rosenworcel (D) contended the FCC should auction all 65 Mhz in that band.

The proceeds of the auction are slated to be used to help pay for a wireless network that would be used for a nationwide wireless network for use by public safety agencies.

Interested bidders most submit an application to participate in the auction by Oct. 23.

Though in the past Dish Network has said the company was unlikely to participate in the H Block auction, the company said in a filing it would be willing to participate in the auction if the FCC agrees to various waivers Dish Network has asked for regarding use of its 2 GHz spectrum for terrestrial wireless services.

Among other things, Dish Network said it was willing to exchange having to live with lower power limits being imposed on its 700 MHz wireless licenses in exchange for more flexible power limits in the 2 GHz band the satellite company argued would enable it to provide better service using that spectrum.

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Lightsquared Pushes Terrestrial Plan

WASHINGTON—Though others signaled their opposition, financially troubled Lightsquared mapped out the company's regulatory defense for why its plans to use its 46 MHz of so-called L-band spectrum for mainly terrestrial services would not cause harmful interference to GPS services.

Lightsquared is operating under bankruptcy protection (See story, p. 1).

As reported, the FCC last year revoked Lightsquared's license to provide terrestrial services in conjunction its satellite spectrum.

The FCC started a proceeding last month to consider whether to grant Lightsquared's latest request for a waiver of existing rules so it can use the frequencies for terrestrial services.

Lightsquared contended in a filing that it has laid out a plan, including strict signal power limits and other measures, that would protect GPS services from harmful interference.

Lightsquared also argued a report regarding signal tests its conducted "demonstrates conclusively" that Lightsquared's planned terrestrial services "would not pose any risk to the operation of GPS receivers," which use an adjacent spectrum band.

The company also contended that other terrestrial wireless services have operated in nearby spectrum bands for decades without interfering with GPS applications.

"Lightsquared has also committed to ensure that its [mobile] handsets operate within technical constraints that are more stringent than its current licenses long have authorized," Lightsquared said.

In a subsequent filing, the company argued those who have objected to Lightsquared's plans "utterly fail to demonstrate any issue of concern or justification" for the FCC to prohibit Lightsquared from proceeding with its plans.

In contrast, Lightsquared argued, the company has provided ample evidence that Lightsquared's planned terrestrial services would not cause harmful interference to GPS signals, and that, among other things, the FCC can establish power limits on the company's transmissions to provide further assurances.

But as they have at other points over the years, various groups and industries that use GPS services continued to argue Lightsquared has not proven its point regarding the potential for interference.

Among others, a group called the GPS Innovation Alliance said it remains concerned that Lightsquared's use of the L-band for terrestrial services would, "cause harmful interference to GPS devices in virtually ubiquitous use across many sectors nationwide for critical positioning, navigation, timing, safety-of-life, public safety, industrial, government and consumer applications, which millions of users depend on today."

Meanwhile, during a meeting with acting FCC Chairwoman Mignon Clyburn (D), according to a filing, Lightsquared representatives suggested the FCC should approve the request "as quickly as possible" because doing so "will permit a substantial portion of the L-band spectrum to be put to use for American consumers faster than any other alternative…Inaction would run directly counter to the commission's stated policy goals and likely torpedo any hope of putting this spectrum to work anytime over the next several years."

Lightsquared also argued that a fast decision in favor of the company's request would also help Lightsquared establish a "true value" for Lightsquared and would provide certainty to potential buyers of what assets they would be purchasing.

"Maintaining a perpetual state of [regulatory] uncertainty makes Lightsquared a "spectrum grab,'" the company said. "No one will pay very much for the chance to come up empty" and not be able to use the spectrum licenses for terrestrial services.

The current "stalking horse" bid of $3.5 billion for the Lightsquared assets submitted by a company owned by Dish Network Chairman Charlie Ergen might be "the only one submitted," if the FCC does not make a decision before the planned auction of Lightsquared's assets in December, Lightsquared argued.■

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Satellite Business News (ISSN 1043-0865) is published monthly by Satellite Business News Inc., 5614 Connecticut Ave., N.W., #300, Washington, D.C., 20015. Subscription Rate: 1 year (12 issues), $84.95. Foreign rates available upon request. Periodicals postage paid at Washington, D.C. POSTMASTER: Please send address changes to *Satellite Business News*, P.O. Box 42692, Washington, D.C. 20015.

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DBS Services Face Retrans Deadlines

At press time, Dish Network was closing in on the expiration of a retransmission consent agreement with the Disney-ABC-ESPN camp that could result in Dish Network customers losing access through the DBS service to ABC-owned local stations, as well as national Disney and ESPN channels.

At the same time, Dish Network was also facing the expiration of a retransmission consent contract with Media General and a Sept. 30 deadline was also looming for DirecTv and Citadel Broadcasting.

Dish Network and the Disney-ABC-ESPN camp continued at press time to talk about a new retransmission consent/distribution agreement.

In a statement, Dish Network said it is 'optimistic' it will be able to reach a new agreement.

"Disney has been a good partner with [Dish Network] for a long time," Dish Network said. "We have been talking [to the Disney camp] on a regular basis with [Dish Network's] number one priority to reach a deal with Disney that makes sense for our customers."

Disney-ABC-ESPN declined comment.

But, sources said, the two sides continue to have constructive talks.

Dish Network and Disney have been involved in various lawsuits over the years.

As reported, during Dish Network's quarterly conference call in August, company Chairman Charlie Ergen said the company was "optimistic" the two companies would be able to reach a new deal.

But he also argued there could be a point at which Dish Network, or another video service provider, might decide it is unable to bear the increases in programming costs for ESPN.

Meanwhile, Dish Network and Media General ratcheted up their rhetoric about which side would be to blame if they are unable to agree to a new retransmission consent deal ahead of a Sept. 30 expiration date for their current contract.

Dish Network customers would lose access via the satellite TV service to Media General's 20 local TV stations in 17 mainly mid-size markets on that date.

Following Media General stations starting to run notices on air and posting alerts on their web sites, Dish Network criticized Media General for seeking a 500 percent increase in the retransmission consent fees the DBS service pays.

"Media General's threats against customers in its markets confirm the need for retransmission consent reform," Dish Network said in a statement. "Broadcasters like Media General put profits ahead of the public they are supposed to serve."

As it has during recent congressional hearings, Dish Network suggested retransmission consent rules should be changed to allow video services to deliver distant network stations to replace the network of local stations that have to be removed from channel lineups during contract disputes.

Dish Network also said Media General rejected Dish Network's offer to extend the current agreement until the review of Young Broadcasting's plan to purchase a controlling stake in Media General is complete.

"We have a long-term agreement with Young, meaning customers would not lose any programming," Dish Network said. "The only reason for Media General to reject that offer is to try to squeeze consumers for more money, to the tune of five times what [Dish Network] currently pays."

Among others, Media General owns stations in Charleston, S.C.; Columbus, Ohio; Jackson, Miss.; Providence, R.I.; Tampa-St. Petersburg, Fla.; and Birmingham, Ala.

In alerts on its stations' web sites, Media General argued that, "Usually, these deals are reached without any disruption to your service. Unfortunately, so far Dish Network has refused to reach a fair, market-based deal to carry [the Media General stations]."

Meanwhile, DirecTv and Citadel also were offering slight different views on how optimistic they were about signing a new agreement.

Citadel owns the ABC stations in Lincoln, Neb., and Providence, R.I.

"Rest assured that DirecTv is working hard to ensure that there's no unnecessary disruption to any local viewers of Citadel Communications' two local stations," DirecTv said in a statement on its web site. "DirecTv must receive permission from Citadel to offer its stations in your programming line-up, but Citadel is withholding that permission unless our customers commit to paying three times [more] just to receive the same channels."

For its part, Citadel had issued a less than optimistic notice on its station web sites saying: "Regrettably, our negotiations with DirecTv have reached a point where it appears unlikely that a new agreement will be reached prior to the deadline."

But those notices were taken down a short time later.■

White Sees 'Challenging' Path to DBS Merger

Though DirecTv Chairman Mike White continued to say combining DirecTv and Dish Network could be "pro-consumer and pro-competition," he also sounded a less than optimistic chord during a financial conference that such a transaction would win regulatory approval anytime soon.

"It's no secret that it's a very challenging regulatory environment for any deal to get done," White said.

Pointing to other transactions the Justice Department has blocked in recent months, White said it is unclear whether "this administration is ready to accept that [allowing DirecTv and Dish Network to merge] is acceptable.

Among other things, White argued that a single DBS service could bring down the cost paid to programmers—which continues to be a major concern for DirecTv.

White also argued that though DirecTv and Dish Network devising a business strategy that would combine their satellite TV services with Dish Network's wireless spectrum might give them a "powerful argument" for allowing a merger, it still might not be enough to persuade regulators.

Among other things, allowing DirecTv and Dish Network would also help combat rising programming costs, White said.

DBS Notebook

As DirecTv's programming costs continue to rise, DirecTv subscribers should expect to see another price increase early next year, though probably not as large a hike as they experienced last year, White said during a recent financial conference.

"Prices will have to go up again because content costs will go up again," White said, adding: "We'll be careful about how much."

Among other things, the increases were larger last year because DirecTv changed the prices for using multiple receivers, receiving high-definition channels, and other services, and also started assessing a surcharge for customers who live in markets with multiple regional sports channels, White noted.

As he has numerous times, White complained consumers are concerned about how much they are being charged for their video services.

DirecTv has "certainly seen an impact on churn" this year because of price increases, he said.

White also bemoaned the talks the DBS service has had regarding the Pac-12 Network.

The channel, which DirecTv has so far declined to distribute, has offered "no flexibility" that would enable DirecTv to offer the channel only to those DirecTv customers who want to pay for it.

"As a practical matter, I can't tax all my customers when 98 percent of them, or 99 percent of them aren't going to watch [the channel]," he said, adding DirecTv has to "stand up for the 99 percent who are already angry about [the cost of] their bill."

Following the severe floods that hit parts of Colorado earlier this month, Dish Network and DirecTv each said they were taking steps to ease the financial burden for impacted customers to restore their video service once they regain access to their homes.

Both companies said they are allowing customers to suspend their existing accounts until service can be restored. The DBS services are also waiving equipment and installation fees to replace lost or damaged equipment.

Meanwhile, the Denver area-based Dish Network said it had not suffered any damage to any of its Colorado facilities because of the floods. DirecTv said its uplink center in Castle Rock, Col., was not affected by the floods.

DirecTv told retailers it plans to keep running with the free NFL Sunday Ticket promotional football when its next consumer offer kicks off Oct. 3.

The promotion, the company said in a notice to retailers, is scheduled to run through Nov. 26.

The DBS service will also provide instant rebates to new customers of up to $33 per month in the first year, depending on what programming package is purchased. A second year of $10 rebates each month will also be available to customers with "low-risk" credit scores in the second year of a two-year commitment.

New customers will also be eligible in some cases, depending on their credit score and programming package selected, for an additional $5 per month in credits in the first year, DirecTv said.

The offer is also slated to include DirecTv latest multi-room digital video recorder and up to three client receivers, for free. DirecTv also plans to offer three free months of HBO, Starz, Showtime, and/or Cinemax to customers who sign up for those premium movie channels.

In addition, DirecTv told retailers in a notice, it has expanded the current national con-

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Sirius XM President Sees Accelerated Auto Sales Driving Subs

With car sales more robust than they have been in some time, Sirius XM Radio is on track to meet its net subscriber addition goals, Sirius XM Radio President Jim Meyer said during a recent financial conference.

"I couldn't be more pleased" that auto sales are increasing, Meyer said, which is helping Sirius XM's subscriber numbers.

Meyer also said he was "pleased" about the performance of the company since he was named interim president in December after the departure of former President Mel Karmazin.

Meyer was named the new president in April.

"I don't think we've missed a beat [since Karmazin left]," Meyer said. "We kept our head down and made all our [projected financial and subscriber] numbers."

The company also plans to provide more programming for Hispanic and female subscribers, Meyer said.

Along those lines, Sirius XM plans to start offering a $5.99 per month programming package consisting mainly of programming for Hispanic audiences, Meyer said.

Sirius XM also plans to focus more providing its own Internet-delivered services in addition to its traditional satellite-delivered service.

"In the end, however anyone wants to get our service, they should get it, whether it be broadcast [via satellite] or streamed [over the Internet], or better yet, both ways," Meyer said.

Meanwhile, Meyer said he was "not surprised" major music labels, including Sony and Warner Music, have joined others in filing lawsuits alleging Sirius XM has failed to properly pay royalties for song it plays on its service that were recorded before 1972.

"The law is the law," Meyer said.

Sirius XM is confident in its legal position, he said. "We think we're [in] a very strong position here," Meyer said, adding: "We plan to vigorously defend ourselves."

In addition to the music studios, Sirius XM is facing a lawsuit by music licensing group Sound Exchange alleging the satellite radio company has underpaid music royalties to the tune of $50 million to $100 million.

Sirius XM charges subscribers $1.81 per month to cover its music royalty payments, on top of the $14.95 per month subscription fee.

Sirius XM declined comment on the Sound Exchange lawsuit.

In the lawsuit, filed in federal court in Washington, D.C., Sound Exchange alleged Sirius XM had engaged in purposeful "massive underpayment" of royalties between 2007 and 2012.

"We cannot sit by and watch this multi-billion dollar company reap record profits from the creative contributions of artists and labels without paying them everything they deserve," Sound Exchange said in a statement.

The group contended Sirius XM had taken a number of "impermissible deductions" from the statutory copyright royalty fees the company has paid.

Those fees are calculated based on Sirius XM's gross revenues. Among other things, the group said, Sirius XM should have paid royalties for songs it played that were recorded before 1972.

In addition, Sound Exchange argued, Sirius XM allegedly improperly failed to account for the difference between the gross revenues garnered from its core programming packages and the Sirius XM Premiere offering.

The satellite radio service, Sound Exchange also said, failed to pay royalties for any of the revenues derived from its lower-priced programming offerings.■

ABC-Disney, Viacom Chiefs Defend Pricing

While video services have increasingly complained about rising programming costs and packaging requirements, Disney-ABC Chairman Bob Iger and Viacom President Philippe Dauman each contended during a recent financial conference that consumers and video services are getting their money's worth.

The basic programming packages with an average of 100 channels priced at about $75 per month are "a really good bargain [for consumers]," Iger said, adding: "I think the consumer gets a good deal. I also think the [video] distributor gets a good deal."

Speaking in particular about cable companies, Iger argued that even though video services have seen their programming costs rise, they have also benefited because video has helped drive customers to cable companies' data and telephone services.

"While the cost of programming has increased, and perhaps that has resulted in lower [profit] margins for the distributor, the fact is that they have put themselves in these other businesses that have provided great growth for them over the years," Iger said.

As a result, cable companies "may have to accept lower margins" on their video services.

Iger did not discuss the Disney-ABC-ESPN camp's distribution talks with Dish Network.

Dish Network's current agreement for the Disney-ABC-ESPN channels is scheduled to expire Sept. 30.

Meanwhile, during a separate session at the same conference, Dauman said he is "not concerned" there will ever be legislation enacted that will require that channels be made available on an a la carte basis.

"It's not good for consumers," Dauman said, arguing, as many programmers have, that mandated a la carte programming would actually lead to consumers paying higher prices for the channels they want.

Dauman also defended the practice of Viacom and other programmers to offer lower wholesale pricing to video services that distribute large numbers of Viacom channels rather than smaller numbers.

"It's a fair exchange," he said. "We provide a lot of value."

In addition, he argued, the lawsuit Cablevision filed against CBS over the programmer's pricing of its channels "doesn't have merit."■

NEWS BRIEFS

●**Aereo** said it plans to add Cincinnati, Columbus, Ohio, Indianapolis, and San Antonio later this year to the list of markets were the company offers a service that enables subscribers to watch and record local TV stations online. Aereo already offers its service, which starts at $8 per month, in seven cities.

Meanwhile, the company also became a member of the Consumer Electronics Association.

●**Sirius XM Radio** said it plans to offer $600 million in 5.875 percent senior notes due 2020. The company said it plans to use the proceeds to redeem its outstanding 7.625 percent senior notes due in 2018.

●After last year shutting down its own effort to persuade cable operators to deploy Slingbox' units, EchoStar's **Sling Media** unit said it reached an agreement to work with cable set-top maker Arris to rollout a Sling-enabled device for cable companies.

The unit, the companies said in a statement, will enable users to access live and recorded programming remotely, or over their own home networks, using various mobile devices and Windows and Apple computers.

As reported, Arris acquired the Motorola cable set-top box business from Google earlier this year.

●Saying it has continued to be "irreparably harmed," **Viasat** filed an additional lawsuit against Space Systems/Loral alleging the company has been improperly profiting from obtaining satellite construction contracts for satellites that infringe Viasat patents.

"[Space Systems/Loral's] aggressive marketing of satellites incorporating Viasat's patented technology have damaged Viasat's satellite service business and obstructed Viasat in its efforts to market and sell its own satellite designs incorporating the patented technology," Viasat said in a court filing.

As reported, shortly after the Loral-built Viasat-1 satellite was launched in January 2012, Viasat filed a lawsuit alleging Loral improperly used Viasat-designed technology in the Jupiter-1 satellite Loral built for EchoStar's Hughes unit.

Since the filing of that lawsuit, Viasat said in the most recent filing, Loral has continued to sign contracts to build satellites that infringe upon Viasat's patents.

Viasat has asked for an injunction against Loral continuing its alleged patent infringement, as well as unspecified monetary damages.

●After first saying in June it plans to shut down its **ESPN 3-D** channel at the end of the year, the programmer said it now plans to stop delivering the channel at the end of this month.

As reported, ESPN has cited a "lack of demand" by consumers for 3-D programming as the reason for discontinuing the channel.

DirecTv has begun running a notice in its programming guide regarding the planned termination of the channel.

●**Channel Master** credited the now-resolved retransmission consent dispute between Time Warner Cable and CBS for a "huge surge in sales" of off-air antennas last month.

●Hubbard Media Group's **Reelz Channel** announced it has taken an equity stake in and become a co-producer of OK! TV, a planned daily syndicated entertainment show.■

Broadcasters Notch Win over Aereo-Like Service

WASHINGTON—Though broadcasters have been unsuccessful so far in persuading the courts to stop Aereo from delivering its service that enables subscribers to view local TV stations on-line, Fox Broadcasting won an injunction against a similar service offered by a company called Film On X from a federal court for the District of Columbia.

While Film On X downplayed the significance of the ruling, Fox lauded the decision.

"We are pleased, but not surprised that the court recognized that the commercial retransmission of our broadcast signal without permission or compensation is a clear violation of the law," Fox said in a statement. "This decision should finally put the matter to rest, and will hopefully discourage other illegal services from attempting to steal our content."

For its part, Film On X called the injunction a "short-term and minor setback."

Film On X contended that aside from the local stations it offers, the company's service can survive during the legal proceedings by offering other live channels and video-on-demand offerings.

The injunction forced Flim On X to stop offering local stations nationwide, except in the three states covered by the New York-based federal court of appeals' decision upholding a lower court's rejection of a similar injunction against Aereo.

"It is business as usual for our growing customer base. Not so much for the walking dead networks," Film On X said.

The court in Washington rejected a motion by Film On X to stay the injunction.

As reported, a three-judge panel for the New York federal court handed down a 2-1 decision against imposing an injunction against Aereo.

A federal district court in Los Angeles had already issued a temporary injunction against Film On X that prohibits the service in the federal court circuit that includes nine western states.

In its decision, the federal court in Washington, D.C, said it agreed with the Los Angeles court's reasoning that Film On X's service likely will be found to violate broadcasters' copyrights.

"It suffices to say that nothing about [federal copyright law] or its legislative history suggests that Congress intended a commercial entity that rebroadcasts copyrighted material for consumption by the public, such as Film On X, to avoid liability for infringement of the copyright holders' exclusive right to public performance," the court said.

In addition, contrary to the decisions regarding Aereo by the federal courts in New York, the Washington, D.C., court said Film On X's use of small antennas networked together is "hardly akin to an individual user stringing up a television antenna on the roof."

Meanwhile, Aereo used a filing to a federal court in Massachusetts to try to distance itself from any shadow from the Film On X injunction.

Aereo sought to differentiate its service from the one Film On X delivered.

Aereo objected to characterizations in the Film On X decision of Aereo as being a cable company that retransmits local broadcast stations.

Among other things, Aereo again said the small antennas it uses as part of its service mean it does not have to pay retransmission consent fees and is not violating copyright law.

Each individual user is assigned a separate antenna, Aereo noted.

Aereo also argued the judge overseeing the Film On X case has misinterpreted copyright law.■

TiVo Adds Subscribers, Profits

Crediting additions from various cable operators, TiVo reported it added a net total of 212,000 customers during its fiscal second quarter.

TiVo's financial results were also helped along by the proceeds it recorded during the period from the $490 million settlement the company reached in its patent infringement litigation against Motorola and Cisco in June.

TiVo said it added a net total of 230,000 subscribers through its distribution and licensing agreements with DirecTv and various cable companies around the world.

Those additions were offset by the net loss of 26,000 customers from the rolls of standalone TiVo users.

At the end of the second quarter, TiVo said it had a total of 3.616 million subscribers, of which 981,000 were standalone TiVo users.

Of the remaining 2.635 million, approximately 1.7 million were subscribers to Virgin Media's cable service in the United Kingdom.

TiVo posted net income of $268.94 million during its second quarter, which compared favorably to the $27.7 million loss the company recorded in the same period a year ago.

Absent the inclusion of the proceeds it recorded from that patent settlement, TiVo said it would have posted a net loss of $13.05 million.

The company said it took in revenues of $76.9 million during the quarter.■

Judges

CONTINUED FROM PAGE 1

The judge in the New York case also rejected Dish Network's motion to dismiss portions of the same lawsuit brought by broadcasters against the DBS service by CBS.

CBS has alleged the companies' retransmission consent agreement, signed in December 2011, should be voided because of CBS' allegations Dish Network did not disclose details about its plans for the recorder features while they were negotiating the agreement.

Not surprisingly, Dish Network and Fox took very different views of how the decision, which is under seal, affects their long-term legal case.

"[Dish Network] is pleased that the court has sided again with consumer choice and control by rejecting Fox's efforts to deny our customers' access to the [Slingbox and recorded programming transfer] features," Dish Network said in a statement. "We will continue to vigorously defend consumers' right to choice and control over their viewing experience."

For its part, Fox said in its own statement that, "We disagree [with the judge's ruling] that the harms caused by [Dish Network's] infringing services are completely compensable by damages, and as a result we are looking at all options."

Fox said it plans to "file a response in due course."

Fox has contended the Slingbox and recorded program transfer features violate copyright law, as well as the retransmission consent agreement between the broadcaster and satellite TV service.

Dish Network also noted three other attempts to obtain injunctions against various features on the unit have been rejected by federal courts.

As reported, a federal appeals court upheld a lower court's decision not to grant Fox's earlier request for an injunction that would have required Dish Network to disable the ad-skipping and prime-time recording features of the digital video recorder.

"This [ABC] decision is yet another victory for American consumers, and we are proud to have stood by their side in this important fight over the fundamental rights of consumer choice and control," Dish Network said in a statement. "This is the third federal court decision that has sided with [Dish Network] on consumers' right to enjoy television as they want, when they want, including the right to skip commercials, if they so choose."

As reported, a federal judge in Los Angeles rejected a similar motion by Fox Broadcasting seeking a temporary injunction for Fox, and a federal appeals court upheld that decision (*Satellite Business News*, Aug. 28, 2013).

ABC later filed a notice with the federal appeals court in New York that the network is appealing the decision.

"[The] ruling is only a preliminary decision and the first step in the judicial process," ABC said in a statement. "We continue to firmly believe that [Dish Network's ad-skipping and prime-time recording features] breach our retransmission consent agreement with [Dish Network], infringe upon ABC's copyrights, and unfairly compete with the authorized on-demand and commercial-free options currently offered by ABC and its licensees."

How the court ruling might impact the current negotiations between the Disney-ABC-ESPN camp and Dish Network regarding a new distribution contract was not immediately clear.

Dish Network's retransmission consent/distribution agreement for the programmers local stations and national channels is slated to expire Sept. 30.

The court had only released a notice of the ABC decision at press time, and said it would delay the release of the full order until the parties in the case could review it to determine what portions of it contained privileged information that would be withheld from public view.

Meanwhile, in response to the decision regarding the CBS claim, Dish Network said in a statement: "We will continue to defend ourselves vigorously against CBS' claims."

CBS, not surprisingly, said in its own statement was "very pleased" with the court's decision rejecting Dish Network's dismissal request.

"This ruling allows us to show in trial that what [Dish Network] knew and what [Dish Network] said it knew [about its digital video recorder plans] are two absolutely different things and give reason to unwind a deceptive contract."

As reported, CBS added that claim in January to the broadcast network's original lawsuit against Dish Network regarding the recorder's functions.

CBS complained Dish Network executives never mentioned the planned ad-skipping and prime-time recording features even though CBS said it has since learned through the discovery process Dish Network knew at that point the features would be included in the lawsuit.■

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CBS, Time Warner Cable Tune In Deal

After spending a month throwing every name in the retransmission consent dispute lexicon at each other, CBS and Time Warner Cable announced on Labor Day they had worked out a new agreement that returned CBS' owned-and-operated stations to the cable company's line-up in New York, Los Angeles, Dallas, and parts of other markets.

The agreement also resulted in Time Warner Cable customers across the country regaining access through the cable company to national channels owned by CBS, such as Showtime and The Movie Channel.

In addition, DBS subscribers and others across the country who subscribe only to Time Warner Cable's cable modem service, and not its video service, were again able to watch CBS programming on-line.

Though the parties did not disclose the financial terms of the agreement, they said the deal includes the rights for Time Warner Cable to provide Showtime and CBS video-on-demand programming to its subscribers.

The deal did not include limitations on Time Warner Cable subscribers fast-forwarding through commercials in recorded programming, sources said.

Time Warner Cable had claimed CBS was making such demands during the retransmission consent negotiation.

In a memo sent to CBS employees, network President Les Moonves said the agreement provided the network with "all the value and terms" that CBS had been seeking, including receiving compensation for programming delivered on-line.

"This was a far more protracted dispute than anyone at CBS anticipated, but in spite of the pain it caused to all of us, and most importantly the inconvenience to our viewers who were affected, it was an important one, and one worth pursuing to a satisfactory conclusion," Moonves said in the memo. "That has been achieved."

Not surprisingly given the rhetoric between the two sides throughout the dispute, Time Warner Cable Chairman Glenn Britt contended the cable company had at least partially succeeded in its goal during the talks "to hold down costs," for its customers.

"While we certainly didn't get everything we wanted, ultimately we ended up in a much better place than when we started," Britt said in a statement.

Time Warner Cable also continued to press for Congress and the FCC to take steps to overhaul the retransmission consent rules.

"The rules are woefully out of date, are the primary reason cable bills are rising, and too frequently leave our customers without the programming they love," Britt said. "We sincerely hope that policymakers heed that call and take action to prevent these unfortunate blackouts soon."

In the wake of the end of the stalemate, Time Warner Cable President Rob Marcus admitted the dispute took a toll on the cable company's subscriber numbers. Marcus spoke at a financial conference

But at the same financial conference, Moonves argued the network suffered no ill-effects.

"Suffice it to say that the absence of CBS [owned-and-operated stations] in New York, Los Angeles, and Dallas, and Showtime across our entire footprint definitely had a subscriber [loss] impact," Marcus said." It suppressed [new customer] connects on the front end and it increased disconnects of existing customers. And we don't take that lightly by any means."

At the same time, he said, "While there was a fair amount of pain that we had to endure, at the end of the day we felt like...in order to achieve our longer-term business objectives, [suffering the loss of CBS programming] was the only path."

Though Time Warner Cable subscribers went without CBS-owned local stations and national channels in their line-ups for a month, the cable company thought the fight was worth it in order to help hold down programming costs, Time Warner Cable Chief Financial Officer Artie Minson said during another subsequent financial conference.

"The decision to go dark [and lose the channels and local stations] was not one we took lightly," he said. But the company determined it is "not very sustainable" economically to continue seeing steeply increasing retransmission fees each year, Minson said.

Though he declined comment on specific terms of the agreement Time Warner Cable and CBS eventually reached, he said, Time Warner Cable ended "up in a much, much better place" than the terms CBS was seeking at the beginning of the stalemate.

Moonves, speaking separately at the same conference, noted the stalemate fell during a generally slow ratings period at the end of summer and said the economic impact of the impasse on CBS amounted to "virtually none."

Though CBS is "sorry" viewers were affected, Moonves said, "You will see at our third quarter earnings [release] that there was no harm done finan-

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Varied Reaction Greets CBS-Time Warner Cable Deal

The resolution of the frequently vitriolic month-long retransmission consent/distribution fight between Time Warner Cable and CBS prompted a bevy of responses from various corners expressing everything from relief, to statements the fight was a sign retransmission consent rule reform is needed, to calls for keeping the status quo in place.

Acting FCC Chairwoman Mignon Clyburn (D) said she was "pleased" the two sides reached a new agreement.

But she also bemoaned the loss of programming Time Warner Cable customers experienced.

"At the end of the day, media companies should accept shared responsibility for putting their audience's interests above other interests and do all they can to avoid these kinds of disputes in the future," she said in a statement.

During the middle of the dispute, Clyburn had issued a statement warning the companies to settle their differences, or risk some unspecified action by the FCC.

"Our primary concern remains with consumers and viewers, and we are disappointed that the respective parties have yet to reach a retransmission agreement," Clyburn said in the statement. "We urge all parties to resolve this matter as quickly as possible so consumers can access the programming they rely on and are paying for."

The American Television Alliance, whose membership includes Time Warner Cable, DirecTv, Dish Network, and others, continued to urge the FCC to revamp the retransmission consent rules.

While the FCC has made minor modifications over the years to the rules, the agency has said it would need congressional approval to do more.

The group also complained the FCC should not have allowed CBS to block access by Time Warner Cable cable modem subscribers, including DBS subscribers, from access CBS programming on-line.

"We are disappointed that the FCC chose not to use its authority to protect consumers or to stop CBS from blocking [Time Warner Cable's] broadband customers across the country from accessing its on-line content," the group said in a statement. "CBS' tactics were in clear violation of their public interest responsibilities and a record number of elected officials, consumer groups, and civil rights leaders weighed in to register their concerns."

The American Cable Association (ACA) accused CBS of engaging in "shameful conduct" during the dispute.

"If CBS can leave millions of pay-TV viewers in the dark for 32 days, no one can say with a straight face that the marketplace is working well for consumers," the cable group said. "The CBS blackout also underscores the broadcast industry's refusal to endorse new rules supported by cable operators that will allow consumers to continue to view programming while broadcasters and pay-TV operators continue to negotiate new contracts."

The cable group also contended that the CBS-Time Warner Cable dispute is "far from an isolated case."

As a result, the ACA called upon the FCC to establish rules that would prohibit video services and broadcasters from making local stations unavailable during retransmission consent disputes.

"The time has come for the commission to act," the group said. "[The ACA] believes fundamental reform is necessary; however, broad changes to the rules governing retransmission consent need not stand in the way of the commission taking some more limited regulatory action now to ensure that consumers are never again left without access to local broadcast signals when disputes arise."

The rule, the ACA suggested, should automatically extend the terms of the expiring contract, with any new terms applied retroactively once a new agreement is reached.

The cable group argued the FCC has "adequate authority" to adopt such a proposal and does not require the commission to take sides with either party.

"Without action by policymakers to change the laws governing these negotiations there will undoubtedly be many more blackouts," the ACA said.

Though the ACA continues to want more extensive retransmission consent reform legislation, the rule the group is asking the FCC to impose would "help to protect viewers from the deleterious results of outdated rules which are awaiting long overdue and more comprehensive reform."

On the opposite side of the fence, the National Association of Broadcasters (NAB) continued to take the stance that broadcasters should be "fairly compensated" with retransmission consent fees, and also blamed DirecTv, Dish Network, and Time Warner Cable for being the root of most retransmission consent disputes.

"Rather than create a manufactured 'crisis' that would inject government into the free-market, these three firms might better spend their time working toward amicable resolutions over TV programming most valued by viewers," the NAB said. ■

Eshoo Sparks Discussion with Draft Retrans Bill

By Jeffrey Williams

WASHINGTON—A draft retransmission consent reform bill Rep. Anna Eshoo (D-Calif.) distributed recently that would, among other things, keep local stations in consumers video service channel line-ups during disputes, drew supportive reactions from video service interests and a harsh rebuke from broadcasters.

"Recurring TV blackouts, including the 91 U.S. markets impacted in 2012, have made it abundantly clear that the FCC needs explicit statutory authority to intervene when retransmission disputes break down," Eshoo said in a statement. "This discussion draft is intended to spur constructive, actionable debate on ways to improve the video marketplace for video content creators, pay-TV providers and, most importantly, consumers."

The bill would also enable video service customers to opt out of paying for broadcast stations in their channel line-ups that elected to negotiate retransmission consent with their video service.

Under that bill, companies that own broadcast stations and other programming channels would also be prohibited from tying retransmission consent for local stations to distribution of their other non-broadcast channels.

The bill would also direct the FCC to examine whether broadcast station owners that prohibit on-line access to their programming during retransmission consent violate the "good-faith" negotiating rules.

The commission would also be required to study sports programming costs for national and regional sports channels.

Dish Network issued a statement praising the Eshoo legislation because it includes "concrete legislative ideas to give consumers greater choice over their programming, tackles the growing problem of bundling of cable channels with network channels, and empowers the FCC with significant authority to curtail blackouts."

DirecTv also said it applauded Eshoo for "tackling this issue and recognizing that consumers are being harmed."

The American Cable Association (ACA) also said it "applauds" Eshoo for offering a "timely and thoughtful plan for addressing serious problems causing harm to consumers related to the broken retransmission consent and sports programming markets."

But National Association of Broadcasters (NAB) President Gordon Smith (R) issued a statement that on one hand noted his "great personal affection" for Eshoo, and then said he was "surprised by the pro-pay TV slant" of her draft bill.

The statement also repeated the broadcast group's recent efforts to blame DirecTv, Dish Network, and Time Warner Cable for "spending millions [of dollars] in Washington manufacturing a crisis over retransmission consent."

The NAB reaction set off a rhetorical fight with cable operator Mediacom, which dismissed the broadcast group's claims as "ludicrous."

Indeed, in a four-page letter sent to the group, Mediacom alleged a list of

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Hearings

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perstation provisions, Dodge said during the hearing that retransmission consent disputes have reached a point that warrants lawmakers making major changes to retransmission consent rules.

"It's an unfair fight as it stands," Dodge said.

As he has at previous hearings, and would the following day, Dodge suggested the rules should, among other things, at least be changed to allow video services to deliver distant network stations to replace any network that has to be removed from their channel line-ups during retransmission consent stalemates.

Though broadcasters object to the idea, such a provision, Dodge said, would protect against the "growing problem" of consumers losing access to local channels via their video service because of retransmission consent disputes.

Dodge also argued that broadcasters should not be able to "talk out of both sides of [their] mouth" about retransmission consent disputes.

"If broadcasters are going to sit here and wrap themselves in localism, as they do 99 percent of the time, why do they want to take the signal down and disenfranchise [viewers]?" he asked.

Dodge also objected to broadcasters running advertisements in newspapers and crawls at the bottom of the screen saying, "'The sky is falling, you better switch now'" to another video service.

"While a broadcaster might lose a [viewer] for 30 days," Dodge said, "Dish Network loses a customer for eternity."

In his written testimony, Dodge also suggested Congress should consider requiring broadcast station owners to negotiate retransmission consent agreements separately from any distribution agreements for other non-broadcast channels they own.

Not surprisingly, Waldron questioned whether the distant network station and superstation rules should be extended. Waldron is a broadcast industry lawyer.

"The distant [network] signal license is a vestige of a bygone era," Waldron said.

In his written remarks, Waldron went further, saying: "Given that we're now in the fourth decade of a 'temporary' provision, we think the satellite industry needs to prove to members of the subcommittee why this "temporary' exception to the norms of copyright law should not sunset."

Any extension of the rules should be "narrowly tailored" and not delve into other areas, such as retransmission consent, he argued.

"Arguments that broadcasters have too much leverage in the retransmission consent process or that broadcasters are responsible for rising [video service] bills are untrue," Waldron said.

Indeed, Waldron contended in the written remarks that retransmission consent is "not in any way relevant" to whether the distant network station and superstation rules should be allowed to expire.

"Any efforts to address unrelated issues would only prolong and complicate this reauthorization process," he said.

As other broadcast interests have argued in recent months, Waldron also accused DirecTv, Dish Network, and Time Warner Cable of creating a "manufactured crisis" regarding retransmission consent impasses.

Meanwhile, as sports leagues have for years, Major League Baseball attorney Robert Garrett contended Congress should let the compulsory copyright license rules for distant network stations and superstations expire.

The current rules, he argued, result in sports leagues and other copyright owners being forced to accept below-market rates, which leads to copyright holders having to "unfairly subsidize" large video services.

If Congress extends the distant network station rules, Garrett argued, lawmakers should instruct the Copyright Royalty Board that establishes copyright fees to ensure that video services pay "market rates" for programming.

In his written testimony, Garrett argued, "The effect of these [compulsory copyright] licenses is to divest baseball, as well as other copyright owners, of any ability to negotiate with satellite carriers and cable systems over the terms on which those services commercially exploit broadcasts of [Major League Baseball] games," he said. "These licenses are impediments to the operation of the free marketplace... An inequitable and unjustifiable regulatory regime that supplants marketplace negotiations should not be perpetuated simply because some parties have become accustomed to it."

Former ABC and Fox executive Preston Padden, who claimed he was testifying on his own behalf, argued in favor of eliminating all compulsory copyright licenses that cover video programming.

"The earth will continue to spin" if those rules are eliminated, he said.

Compulsory copyright rules like those used for distant network stations are "just not necessary" anymore, he said.

Padden, a long-time satellite TV industry nemesis, argued video services would simply negotiate for all of the channels and stations they want to distribute.

Century Link Regional Vice President of Public Policy James Campbell said that contrary to broadcast interest statements, video services do "not seek to avoid paying reasonable rates" for broadcast stations, "but we do seek fair rules."

The current review of the satellite TV law, Campbell said, provides Congress with an opportunity to "reform and rebalance" the rules for retransmission consent talks, which he contended are skewed toward broadcasters.

Subcommittee Chairman Howard Coble (R-N.C.) was among several of the lawmakers at the hearing who expressed concern about consumers losing access to programming because of retransmission consent impasses.

As the subcommittee examines the issue, "Our top priority will be to protect consumers," he said.

Coble also noted that lawmakers' constituents "aren't shy about asking us to do something about a marketplace that deprives them of their shows."

Though Rep. Mel Watt (D-N.C.) said he was leaning toward taking the view that there is no longer the need for the rules, he stopped short of calling for an end to the distant network station and superstation rules.

He also contended the subcommittee has a "unique opportunity to tackle" video-related issues that some would like to see addressed.

Meanwhile, at the hearing the following day, House Communications and Technology Subcommittee Chair-

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Hearings

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man Greg Walden (R-Ore.) said he plans to release a discussion draft of legislation that would make changes to video-related laws.

But he did not disclose what provisions would be included in his draft bill.

"It takes time and process to develop good policy and even more to build consensus. Yet, the deadline for reauthorizing [the satellite TV provisions] looms large, and we must continue to make progress," he said. "With that in mind, I expect to circulate a discussion draft on these issues no later than the first quarter of next year."

In the past, Walden has been among those who said he was leaning toward a simple reauthorization of the expiring satellite TV provisions (*Satellite Business News*, June 26, 2013).

"Given [the] technological changes and the multitude of options available to American consumers, our laws should reflect the operation of the free market in a competitive environment," Walden said.

Frequent references were made during the hearing to the recently resolved month-long contract dispute between CBS and Time Warner Cable, with lawmakers expressing concern in general about retransmission consent stalemates that result in consumers losing access to local broadcast stations though their video services (See story, p. 10).

Among them were Rep. Anna Eshoo (D-Calif.), who touted the merits of the draft legislation she started floating that would, among other things, require consumers be allowed to continue watching local TV stations through their video services during retransmission consent disputes (See story, p. 11).

"I just don't think it's defensible" for broadcast stations and video services to let consumers suffer through loses of programming, Eshoo said during the hearing.

Several Republicans speaking during the hearing—including Energy and Commerce Committee Chairman Fred Upton (R-Mich.), Marsha Blackburn (R-Tenn.), and Joe Barton (R-Texas)—were among those who argued the existing retransmission consent and other video-related provisions are outdated, and should be revamped, if not completely eliminated.

During remarks at the hearing, Blackburn argued current telecommunications law "unfairly treats competing video distributors with different rules."

But she stopped short of making specific recommendations about what changes should be made.

In his comments, Barton said, "I do think it's time to do a complete review of our various laws and regulations" that deal with video services.

"I really hope we can come up with a regulatory scheme, if we need one [at all], that brings us into the 21st Century," he added.

Others expressed concerns in general about rising prices for consumers.

"We've got to look out for the consumers," Rep. Peter Welch (D-Vt.) said. "[The price of video services] is really getting out of hand."

Dodge largely reiterated comments he has made at other hearings on the subject of video-related laws, including the one earlier that week, that the "retransmission consent process is broken and in need of targeted reform."

At the very least, Dodge said, Congress should consider the suggestion by Dish Network and other video services and groups that video services that are unable to offer local television stations because of a stalemate should be allowed to offer distant network stations to replace them.

In his written testimony, Dodge argued that, "Without immediate action by Congress...it seems likely that millions more screens will go dark every year, and consumers will pay more and more for their cable and satellite service," Dodge said. "The time to act is now."

In contrast to the sometimes terse comments between Dodge and the broadcast industry representative on the panel at the earlier hearing, there were few direct exchanges between Dodge and the NAB representative at the later hearing held by the subcommittee, Ed Munson, general counsel of Meredith's KPHO-TV.

But, not surprisingly, Munson held to the NAB's line that the number of retransmission consent fights that result in consumers losing access through their video services, though often high-profile, are actually a rare occurrence.

And, not surprisingly, he blamed DirecTv, Dish Network, and Time Warner Cable for purposefully creating retransmission consent stalemates in order to prompt lawmakers to take action to change the retransmission consent rules.

Several lawmakers expressed unhappiness CBS blocked access to CBS programming on-line by Time Warner Cable data customers, regardless of if they were Time Warner Cable video subscribers, such as DBS subscribers.

He blamed the video services for a "clear and disturbing pattern [that] is emerging" with the increase in retransmission consent disputes the past several years.

"It is not a coincidence that these are the companies pressing Congress and the FCC most aggressively to tip the marketplace for broadcast signals in their favor," Munson claimed. "Congress should resist this cynical ploy by cable and satellite companies and refuse to intervene in a free marketplace."■

DBS Notebook

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sumer offer to provide a second year of programming credits to customers deemed to have "medium-risk" credit scores, rather than just those deemed to have "low-risk" credit scores.

Meanwhile, DirecTv has started allowing subscribers to watch live streams of many channels on their Windows and Apple computers using their home networks, the company said . The feature is available at no extra charge. As reported, DirecTv had already been enabling subscribers to watch a selection of channels live using their tablets and phones.

DirecTv's top priority for its U.S. DBS service over the next two years will be dealing with programming cost increases, Chief Financial Officer Pat Doyle said during a recent financial conference.

"I think we've got a good plan for dealing with that," he said.

That plan includes passing some price increases through to customers, holding down programming costs in general, and driving other revenue streams to the business to make up for any programming cost differences, Doyle said.

"We've got to be very disciplined on costs," he said.

DirecTv will continue to make "tougher decisions" about what channels it is willing to add or continue offering, Doyle said.

In particular, he pointed to The Pac-12 Network and the Houston-area regional sports channel as examples of channels DirecTv has deemed, so far, to be too expensive to start offering.

DirecTv was not overly concerned by its subscriber losses in the second quarter, which were "consistent" with what the company expected, Doyle said.

"The second quarter is not great for the [video] industry as a whole," he said.

As reported, DirecTv lost a net total of 84,000 subscribers during the second quarter (*Satellite Business News*, Aug. 28, 2013).

DirecTv's goal, Doyle said, is to finish with net positive subscriber additions for the full year, while continuing to attract good quality subscribers.

Doyle also played down the potential impact of companies such as Intel, Sony, Apple, Google, or others launching their own Internet-delivered video services.

"It's very difficult economically—and there are other structural issues—[for] anybody to replicate what we do," he said, adding: "There's always been a lot of talk. We still haven't seen anybody launch one of those" types of on-line services.

The biggest issue, he said, is the difficulty in obtaining distribution rights from programmers who are going to be reluctant to upset other distributors.

"Could we see something [deployed]? We might," Doyle said. "But I don't think it's going to be a threat to a linear business."

Though DirecTv's efforts to acquire Hulu did not work out, DirecTv remains interested in either trying at some point to acquire a similar company or build its own similar service, he said.

Hulu was, he noted, an "interesting" company to consider acquiring because it already had an established business that would be a "good complement" to what DirecTv already offers.

DirecTv, Doyle said, has about 4.5 million customers with Internet-connected satellite receivers.

Those customers are providing DirecTv with $3 to $4 per month in revenue than customers without Internet-connected receivers, he said.

Doyle also argued that though combining DirecTv and Dish Network could lead to "billions" in cost savings that could drive down subscription prices for consumers, there would have to be "a lot of confidence that we could get a deal done" in order to pursue such a transaction.

In addition, he noted, "Right now, Dish Network is certainly on a path of continuing to explore their wireless options...[U]ntil they've exhausted those and have decided a path going forward, I don't know that they're even in a position of even thinking" about a deal with DirecTv.

During a subsequent financial conference, White said that as part of its continuing effort to contain costs, DirecTv must be prudent about how large a discount it provides customers in their first year of subscribing to the DBS service.

"We're as aggressive as ever about gong after subscribers," White said, but added the company does not like the idea of "discounting your way" to net subscriber gains.

Dish Network announced an agreement with the cable-controlled NCC Media to participate in NCC's program that delivers targeted advertising to 25 of the largest television markets.

Dish Network has about 3 million subscribers in those markets capable of receiving the locally targeted ads, the companies said. NCC is owned by Comcast, Comcast, Cox, and Time Warner Cable.

Dish Network digital video recorders are capable of storing location-specific ads, which Dish Network can then insert in local advertising breaks in those markets, the company said.■

NFL

CONTINUED FROM PAGE 1

attention with a video promoting Sunday Ticket which starred Eli and Peyton Manning.

Though he declined to state specific numbers, DirecTv feels "really good" about its subscriber additions during so far this quarter.

Doyle made similar remarks during an earlier financial conference.

"First and foremost, our goal would be to maintain it as an exclusive product," Doyle said, adding: "We think that's a good fit or the NFL. We've been good partners with the NFL. Obviously, they ultimately make the decision on how they want to sell it…I think we'll probably end up continuing to have our relationship with the NFL on an exclusive basis. But if the only way they wanted to sell [Sunday Ticket to consumers] was some other [non-exclusive] way, we would certainly entertain that."

Meanwhile, Doyle said, DirecTv's current national consumer promotion that, among other things, provides this season of The NFL Sunday Ticket for free is "being received very well," Doyle said.

He did not specify how many customers the offer had attracted.

"The strategy is to try to move them from free [Sunday Ticket viewers] to pay [for the package] the following year," he said.

Noting this is the third consecutive season of offering such a promotion, DirecTv has seen a "good trend" of converting customers who received the package for free the previous year to being paying subscribers the following year, he said.

The number of subscribers signing up for the package this year is "moving along our expectations, maybe a little bit better," Doyle said.

DirecTv plans to "re-assess" the strategy of offering the football package for free after this season, he said.

"But so far, there's nothing that's happened that tells us this isn't a good tactic to take," he said.

As reported, DirecTv' $4 billion agreement in 2009 with the league ends after next season.

Meanwhile, the first three weeks of the NFL season saw DirecTv deal with intermittent technical issues that resulted at various points in some NFL Sunday Ticket subscribers not being able to log in to view games on-line.

Satellite viewing if the games was not impacted.

Though the problems were ultimately resolved each afternoon, DirecTv blamed "technical difficulties" for customers' log-in issues.

In posts on various Internet social media sites, DirecTv blamed heavy traffic to the web site for the computer issues during the first two weeks.

The company said in posts that some NFL Sunday Ticket subscribers were "experiencing time out errors and log-in issues."

In the third week, DirecTv said it dealt with "technical difficulties intermittently throughout the day" with providing access through its web site to NFL Sunday Ticket package subscribers using computers.

Games again continued to be available to its satellite TV subscribers, as well as on mobile devices.

"We apologize to fans for the inconvenience this has caused them and are currently investigating the root cause to ensure this does not happen again," DirecTv said in a statement.

During the afternoon games that day, DirecTv customers could not access the on-line version of games. In an on-screen message, DirecTv blamed "technical difficulties" for the issues.

DirecTv then notified customers through various Internet social media web sites and the DBS service advised subscribers they could access an alternate feed of the games on-line by enabling the "closed captioning" option.

DirecTv eventually fixed the issues and the games were again available in high-definition without having to activate the close-captioning features.■

Deal

CONTINUED FROM PAGE 10

cially to CBS Corp. because of this…At the end of the day, it didn't hurt us one iota."

Moonves also again blamed Time Warner Cable for the dispute that resulted in Time Warner Cable customers losing access to CBS-owned local TV stations and national channels.

"That was their decision, not ours," he said. "At the end of the day, we were fighting for something that as very important, which was not only to get paid for [retransmission consent] but also to [make] our content [available] elsewhere," such as various on-line services like Amazon.

Moonves' comments echoed those he made as the impasse continued, when he took Time Warner Cable to task for not being willing to agree to the same terms Verizon reached recently.

The announcement of the Verizon agreement "makes clear," Moonves said, that, "if there was ever any doubt, that we are prepared to move decisively and thoughtfully to achieve a good conclusion for all parties involved in these kinds of negotiations. When Time Warner Cable is ready, we'll be there."

The Verizon agreement made CBS owned-and-operated stations available to the approximately 3.5 million of Verizon's 5 million video service subscribers who live markets where CBS owns stations, including New York, Dallas, and Los Angeles.

Those are the same markets where local CBS stations had been unavailable to Time Warner Cable customers.

CBS said it had offered "almost exactly the same terms" to Time Warner Cable that Verizon accepted, Moonves said.

"I cannot describe to you the frustration I feel at the way these negotiations have gone [with Time Warner Cable]," Moonves said in a memo. "Never in my most pessimistic moments did I ever think that they would have lasted this long and have been so difficult."

Moonves contended Time Warner Cable demanded different terms than other video services.

"I am frankly mystified by what appears to be a lack of urgency to resolve this matter for their customers," he said.

Meanwhile, Time Warner Cable resolved a less profile dispute with Journal Broadcast that returned Journal-owned stations to Time Warner Cable's channel line-ups in the Milwaukee and Green Bay-Appleton, Wisc.; Palm Springs Calif., and Omaha, Neb., markets after a nearly two-month absence.

Both sides, which had blamed the other for the impasse, contended in statements that they had come out ahead in the talks.

"We appreciate our customers' patience and loyalty throughout the dispute," Time Warner Cable said in a statement. "As in all of our negotiations, we aim to hold down programming costs and retain our ability to deliver a great video experience for our customers. We are glad that we were able to achieve both."

For its part, Journal said in its own statement that, "It was essential for us to receive fair market value for our products and services so that we can continue to invest in the high-quality local and network programming our viewers deserve."■

Washington Footprint

CONTINUED FROM PAGE 4

"[Dish Network] has determined that more flexible use of [2 GHz spectrum for terrestrial use] may allow it to best optimize its 2 GHz satellite and terrestrial services," Dish Network said.

Dish Network has repeatedly complained the Sprint-backed interference rules the FCC established regarding terrestrial use of the 2 GHz band were too restrictive.

"Granting [Dish Network] the requested [2 GHz] flexibility now, and specifically, prior to the commission's planned H Block auction, will…enable [Dish Network] to participate more meaningfully in the upcoming H Block auction because [Dish Network] will have the certainty to plan for potential acquisition and deployment of the H Block in combination with [its 2 GHz spectrum]."

★A federal appeals court handed down a decision that upheld the FCC's overall program carriage rules, but also struck down, largely on a legal technicality, a provision the agency added to its program carriage rules in August 2011 that in some cases requires a multichannel video service to continue distributing channels that have filed carriage complaints past their contract's expiration date while the complaint is being adjudicated.

Time Warner Cable and The National Cable and Communications Association's (NCTA) filed the legal challenge to the program access rules.

Though the time might come, the court said, in the "not too distant future" when the FCC would not be able to argue the overall program carriage rules are necessary to protect video competition, "that time has not yet come."

Among other things, the court pointed to the fact that cable companies still serve 60 percent of multichannel video subscribers.

"[A]t the same time that we uphold the program carriage regime today, we encourage the FCC to re-evaluate the program carriage regime as warranted by increased competition in the video programming industry," the court said.

In a statement, the NCTA said it was "pleased with the court's decision to reject the FCC's attempted expansion of the program carriage rules," as well as the court's statement the FCC might need to re-examine the program carriage rules in general at some point.

The court ruled the FCC had violated federal administrative procedures by not providing proper notice and chance for the public to comment on the standstill provision.

Though the court also said it was unclear the FCC actually has the authority to impose such a rule, the court also noted, the FCC is free to initiate a proper proceeding regarding the issue that complies with the public notice rules.

In a statement, acting FCC Chairwoman Mignon Clyburn (D) said she was "pleased" the court upheld the overall program carriage rule regime.

"Although the court overturned the standstill rule on procedural grounds, it recognized that the commission remains free to adopt the same rule in accordance with the requirements of [federal procedures]," she said in a statement.■

Lightsquared

CONTINUED FROM PAGE 1

offer amounting to $3.5 billion from a company owned by Dish Network Chairman Charlie Ergen identified as the "stalking horse" bid.

"Lightsquared has always believed, continues to believe, and operates on the premise that concluding discussions with the FCC and interested government agencies regarding the terrestrial deployment of its wireless spectrum significantly increases the value of [Lightsquared's assets] and most likely leads to a value-maximizing solution, whether through a sale process or an alternative transaction," Lightsquared said in a filing.

Lightsquared also told the court it is seeking other stalking horse bids for the auction that it hopes would value the Lightsquared assets more highly than the Ergen company's bid, and also would result in Lightsquared remaining a standalone company.

But the company also suggested the court set a Nov. 25 deadline for any potential bidders for Lightsquared's assets to step forward, with an auction scheduled for Dec. 5.

In another filing, Lightsquared argued that allowing it to conduct its own sale rather than though the auction others favor will enable Lightsquared to receive the most money for its assets, and also increase the likelihood its wireless frequencies are put to use.

"The competing bid procedures [suggested by debt holders] simply reflect the self-interested motivations of secured creditors seeking recoveries on their outstanding debts on their own terms," Lightsquared said in the filing.

Lightsquared also argued the court should not give lenders any veto power over how Lightsquared's assets are sold.

"Lightsquared must be able to exercise its business judgment to make the complex decisions necessary to evaluate and encourage bids for its assets, without being subjected to [debt holders'] consent," Lightsquared said. "Only in this manner will the value of its estates be maximized."

Harbinger said it would obtain loans of up to $2.183 billion to pay off debt holders, as well as other loans of $573 million to fund the company's operations, along with another $259 million in funds contributed by Harbinger.

Harbinger and Falcone recently agreed to a settlement with the federal government regarding securities fraud charges.

As reported, the bankruptcy court has set Dec. 5 as the date by which any auction of Lightsquared's assets would be completed.

The Harbinger plan would also be contingent upon the FCC granting Lightsquared approval to use at least 25 MHz of its spectrum for terrestrial services, Harbinger said. Harbinger also contended in its filing that the bid by Ergen's company would be an "illegal transfer" of spectrum licenses to that company without approval from the FCC.

In addition, Harbinger said, allowing an Ergen-controlled company to control Lightsquared would result in "substantial delays" before Lightsquared's spectrum could be used because such a transaction would require FCC approval.

Harbinger also reiterated allegations Harbinger has made in a lawsuit that Ergen has engaged in fraud to obtain more than $1 billion in Lightsquared debt.

But the Ergen-led group of Lightsquared debt holders also asked the bankruptcy court to proceed with an auction of Lightsquared assets with the bidding starting at $3.5 billion.

That figure is derived from the $2.2 billion cash "stalking horse" bid the company controlled by Ergen made in July, as well as the assumption by that company of other Lightsquared obligations including contracts with Inmarsat and Boeing, the debt holders said in a filing.

"The time to conclude these [Lightsquared bankruptcy] proceedings has arrived," the debt holders said.

In the filing, the debt holders criticized controlling Harbinger of dragging its feet through the bankruptcy reorganization process and essentially ignoring an earlier bid by an Ergen-controlled company.

Lightsquared "will effectively run out of cash at the end of the year, and the risks associated with attempting to buy more time by heaping more debt on [Lightsquared's] balance sheet are prohibitive," the debt holders said.

The debt holders also urged the court to reject Lightsquared request to delay the bankruptcy proceeding while the FCC decides whether to grant Lightsquared's request for approval of the use of the company's spectrum.

Lightsquared, the debt holders argued, has "pursued a single path to the exclusion of all others, maintaining that the only way to proceed was to pursue a highly uncertain resolution of the many regulatory hurdles they face, and that a sale of their assets would be impossible or inadvisable until they solved their regulatory problems."

The debt holders "should not continue to be negatively impacted by [Lightsquared's] conflicts and Harbinger's hope that a regulatory resolution will someday materialize," the debt holders said.

Meanwhile, Ergen and companies he owns that are trying to purchase Lightsquared out of bankruptcy urged a bankruptcy court in New York to dismiss the lawsuit Harbinger filed that alleged Ergen and the others had fraudulently obtained about $1 billion in Lightsquared debt (*Satellite Business News*, Aug. 28, 2013).

"This litigation is a transparent effort by Harbinger to retain control of a company that it has driven into bankruptcy," Ergen said in a court filing.

As reported, an Ergen-owned company called Sound Point obtained the Lightsquared debt, and is among the creditors seeking to sell Lightsquared to another Ergen-controlled company for about $3.5 billion.

In the filing, Ergen argued there is no official corporate tie between Sound Point and Dish Network and EchoStar, and therefore Sound Point had no obligation to disclose the ownership stakes Ergen holds in each company.

But, Ergen argued, Harbinger and Lightsquared knew in May that Ergen owned Sound Point yet did not take any action to try to prohibit Ergen from obtaining more Lightsquared debt.

The Ergen filing also noted Harbinger and its owner Phil Falcone recently reached an agreement with the Securities and Exchange Commission to settle securities fraud charges.

"Harbinger and Falcone have paid millions of dollars in fines and penalties for their manipulation of the securities markets and Falcone has been banned from the securities industry for five years," the Ergen filing noted.■

Bill

CONTINUED FROM PAGE 11

afflictions broadcaster suffer from, including "simple denial" for arguing there is no need to make changes to the retransmission consent rules.

Citing signal strength and coverage area limitations, Mediacom dismissed the contention local stations make that there is no such thing as a "blackout" for local stations because consumers can simply and easily receive local stations' signals off-air.

Mediacom also chastised the NAB and its representative at a hearing for blaming DirecTv, Dish Network, and Time Warner Cable for orchestrating retransmission consent stalemates in order to press lawmakers into changing the retransmission consent rules (See story, p. 1).

Broadcasters, Mediacom suggested, are "addicted to retrans fees."

The cable company also condemned broadcasters for disputing that consumers can easily switch to other video services during retransmission consent disputes.

Not surprisingly, the NAB did not take kindly to Mediacom's criticisms.

The NAB argued that the percentage of their total revenues local stations receive from retransmission consent fees—about 7.3 percent, according to a study the group cited—"hardly constitutes an 'addiction'" to retransmission consent fees.

The broadcast group also called it a "truism" that there is "indeed no such thing as a 'blackout' of broadcast TV programming.

"Our programming is always on, and always available to viewers on multiple platforms, including free to over-the-air antenna households," the NAB said.

The broadcast group also again argued video services should be required to provide customers with refunds when local TV stations they are charged for are not available.

Meanwhile, amid the hearings in the House, the draft bill Eshoo circulated, and the recently resolved CBS-Time Warner Cable dispute, FCC Commissioner Jessica Rosenworcel (D) suggested the agency could play a bigger role in putting an end to retransmission consent impasses.

Stalemates like the CBS-Time Warner Cable impasse are, she said during an interview on C-SPAN, "not a good thing by any measure. We shouldn't want that to happen for extended periods of time. I think the consumers, honestly, [deserve] a refund if that happens for a long period of time. And I think that if it happens for an extended period of time, that the FCC should look at its [authority to enforce 'good-faith' negotiating rules] under [federal law] and try to help do something about it."

She also contended that, "The vast majority of retransmission consent negotiations...they go on uneventfully. We never hear about them."

When disputes do arise, they are "getting more attention now because the number of platforms you can use to watch video is expanding and the issue of 'digital rights' for programmers to access those different platforms is really important [and] is much more complicated than it used to be," Rosenworcel said. "But it's also really good for consumers."

In addition, though she said there is an "allure" to requiring programming to be made available on an a la carte basis, consumer demand might drive programmers and video services making more programming available that way.

"I think over time, the market is going to have to deliver more a la carte and options to consumers," Rosenworcel said.■

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